

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of
CINDY L. BOOTH,

Petitioner,

Index No. 2013/007359
Hon. Robert A. Onofry, A.J.S.C.

For a Judgment pursuant to Article 78 of the
Civil Practice Law and Rules and other relief

**STIPULATION OF
SETTLEMENT**

-against-

VILLAGE OF TUXEDO PARK

Respondent.

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THIS STIPULATION OF SETTLEMENT is entered into as of the date of the last of the notarized signature of the parties hereto, by and between CINDY L. BOOTH (a/k/a Cindy Booth van Schaack) (hereinafter “Booth”) and the VILLAGE OF TUXEDO PARK (hereinafter “Village”):

WHEREAS, the Village of Tuxedo Park Board of Trustees made certain determinations concerning the property of Booth, a resident of Tuxedo Park, and Booth instituted this proceeding against the Village challenging such determinations, and alleging, *inter alia*, that such determinations were arbitrary and capricious, and

WHEREAS, the Village has responded in this proceeding asserting the propriety of each of its said determinations, and

WHEREAS, Booth and the Village desire to resolve their differences without further proceedings and the concomitant delay and expense thereof, and nothing herein shall constitute an admission by either party of any adverse fact alleged in the proceeding,

NOW, THEREFORE, in consideration of the foregoing and the respective terms, conditions and agreements set forth below, the receipt and sufficiency of which is hereby acknowledged, the parties hereto stipulate and agree that this proceeding, including all claims and causes of action asserted, or which could have been asserted, that arise out of the operative facts and circumstances set forth in the various pleadings and other submissions in this proceeding, be discontinued with prejudice, and that each party forever releases and discharges the other from any liability for any actions or inactions related thereto, from the beginning of the world to the date of this stipulation of settlement, upon the terms and conditions that follow:

1. Booth hereby agrees and is obligated to perform, in the manner set forth below, and at her sole cost and expense, the repair of a portion of a certain stone wall that lies east of and along Tuxedo Road. Said stone wall is more than 500 feet in length, varies in height from a few feet to approximately 12 feet at its highest, and runs adjacent to Tuxedo Road. The Village alleged that approximately two hundred fifty (250) feet of said stone wall is in need of some repair and/or maintenance. The parties agree that the portion of the stone wall that shall be repaired by Booth is approximately one hundred (100) feet in length, at and along the location that the stone wall is experiencing its greatest lean from vertical toward Tuxedo Road. Booth's agreement as part of this settlement to repair those portions of the wall as set forth herein shall not be construed as an admission of any kind in regard to the ownership of the wall or that the said wall is actually in need of repair or maintenance as alleged by the Village.

2. The repair of the stone wall by Booth as noted above will involve the dismantling of that section of the stone wall down to approximately a three-foot height,

and a reconstruction of that portion of the wall to its existing height using, to the greatest extent possible, the same stones and capstones removed, and employing a color, width and quality of stone masonry, including pointing, commensurate with such work, and matching the remaining portion of the stone wall. Said work shall be performed by qualified, experienced personnel using best practices to ensure that the reconstructed portion of the stone wall is performed in a sound manner, including necessary drainage, that will also result in an aesthetically pleasing finished product transitioning to the adjacent portions of the stone wall, that will visually match to the greatest extent possible the other unaffected portion of the stone wall.

3. In addition, and to ensure proper drainage and a lessening of the lateral pressure of existing soil against the stone wall, Booth shall construct a permanent swale of approximately two hundred fifty (250) feet in length and approximately three (3) feet in depth on the Booth property, adjacent to and immediately to the east of the stone wall (including the approximately one hundred feet being repaired by Booth). This swale shall be designed to collect and divert stormwater and other surface waters away from the stone wall to assist in the long term structural integrity of the stone wall.

4. Given the proximity of the above-referenced repair and swale work to a major arterial roadway of the Village, the Village shall have reasonable access to the repair and swale work as it is being performed, and upon its completion, for purposes of inspection by the Village to ensure the safety and quality of the work as noted herein and as required by New York State Building Codes.

5. Booth shall employ her best efforts to complete the repair and swale work noted above by June 30, 2015, weather and acts of God permitting, with as little disruption

to the traveling public as possible. The Village will facilitate the partial or complete closing of Tuxedo Road when necessary, and at times that will minimize the inconvenience to the traveling public. To the greatest extent practicable, Tuxedo Road is to remain open to at least one-way traffic during the work. The extent and the scope of the work required to be performed by Booth shall not be subject to expansion or enlargement. The Village shall be responsible for any necessary traffic control during construction. Booth shall be responsible for removal of equipment and debris from the roadway resulting from her repair and swale work after completion of construction. Any required road repairs/resurfacing following construction shall be the responsibility of the Village.

6. The above-noted work to be performed by Booth shall be under the direct supervision of Alan Yassky, and/or Patrick Donaghy, and/or Thomas Salierno of Tuxedo Park, or such other supervision as may be acceptable to the Village, to ensure that the work is carried out utilizing professional and quality means and methods, given the proximity of the stone wall to a major arterial of the Village.

7. After completion of the stone wall repair work noted above, including the construction of the referenced swale, Booth will point that portion of the stone wall adjacent to the swale, being approximately two hundred fifty (250) feet in length. After this pointing by Booth is completed in accordance with a color, width and quality standard noted above, the Village hereby agrees to undertake periodic maintenance, going forward, of this two hundred fifty (250) foot section of the stone wall at the Village's cost and expense. The extent and the scope of the work required to be performed by the Village shall not be subject to expansion or enlargement.

8. It is specifically agreed by the parties hereto that neither the repair and swale work by Booth as set forth above, nor the Village obligation to conduct periodic maintenance of the specified section of the stone wall, shall be evidence of any legal ownership, responsibility or control over or to the stone wall by either party. Each party continues to disclaim ownership, responsibility and control over the stone wall, and nothing contained in this stipulation of settlement alters these respective positions.

9. Booth hereby provides to the Village a permanent easement on and over her property located at 262 Tuxedo Road, Tuxedo Park, New York (Tax Parcel No.: 107-1-8.3), together with the right of the Village to access said easement from Tuxedo Road using Booth's existing driveway. Said easement shall provide access to the Village over a strip of land twenty (20) feet in width and two hundred fifty (250) feet in length running east of, and parallel and immediately adjacent to, the stone wall that is the subject of this proceeding and which lies east of and along Tuxedo Road. The purpose of said easement is to allow the Village access to said stone wall by people, vehicles and equipment acting on behalf of, or at the behest of, the Village for the purpose of the inspection and periodic maintenance of said stone wall as above noted. It is specifically agreed and stipulated by the parties hereto that although the Village has such right of access for the purpose noted, and may do so to ensure the health and safety of the traveling public on the adjacent Tuxedo Road, it has no obligation to repair and/or maintain said stone wall other than the limited obligation to provide periodic maintenance thereto to the extent determined, in the reasonable discretion of the Village, to be necessarily related to the health and safety of the traveling public on the adjacent Tuxedo Road. Said easement shall be effective as of the date of this stipulation of settlement, but shall also be set forth in a written permanent

easement of the same terms, binding upon the successors and assigns of Booth, that must be executed by Booth and filed in the Office of the County Clerk of the County of Orange, in such form as is acceptable to the Village Attorney, within thirty (30) days of the effective date of this stipulation of settlement.

10. In conducting such periodic maintenance work, the Village shall be obligated, at its own cost and expense, to restore Booth's property to the condition it was in prior to the commencement of such periodic maintenance work. The Village shall indemnify and hold Booth harmless for any liabilities, losses, or claims of any kind arising out of or related in any way to the actions of those persons and property involved in conducting such periodic maintenance on behalf of the Village. The easement granted herein by Booth shall not be utilized by the Village for any other purpose, nor be deemed an easement for any other purposes other than as set forth herein. Except where exigent circumstances require immediate action, the Village shall give Booth 72 hours notice in advance of entering Booth's property via email and certified mail. Such notice shall inform Booth of the nature and purpose of the entry and the identity of those persons who will be accessing the property. The parties agree to work reasonably with one another in the event that any rescheduling of the Village's access to the property is necessary.

11. The scope of the repair work described herein to be done by Booth, which does not involve any structural or externally visual alterations, changes in material, design or color, shall be deemed to be an ordinary repair for the purposes of the Village Code.

12. In consideration of the monetary value of the above granting of the permanent easement by Booth to the Village on and over her property, the permanent alteration of Booth's property in constructing the 250-foot swale that will inure to the

benefit of the traveling public along Tuxedo Road, and in further settlement of this proceeding (including the recognition of the avoidance of certain litigation costs of this proceeding to the Village, as well as to avoid the potential impact and uncertainty of continuing litigation), the Village hereby agrees to pay to Booth the amount of one hundred thirty-five thousand dollars (\$135,000.00). Said monies shall be held in escrow by the Village and released to Booth as follows: (i) thirty-three thousand seven hundred fifty dollars (\$33,750.00) within 5 business days of the date that this stipulation of settlement is fully executed, and (ii) one hundred one thousand two hundred fifty dollars (\$101,250.00) upon the successful completion of her repair work on the stone wall, as noted above, and the filing of the above-noted written easement.

13. Each party shall bear the cost of their own attorneys regarding this matter, including the carrying out of the terms of this stipulation of settlement.

14. This stipulation of settlement is binding on the parties hereto, as well as to all related persons, partnerships, corporations, limited liability companies, joint ventures, or other related entities, their predecessors, successors, parents, subsidiaries, assigns, transferees, agents, directors, officers, principals, employees and shareholders. Each of the signatories to this stipulation of settlement represents and warrants that she is authorized to execute this agreement on behalf of her respective party and by such execution binds that party and all successors and assigns to this stipulation of settlement and its provisions.

15. The parties hereto acknowledge that they have consulted with legal counsel of their choosing before entering into this stipulation of settlement, have read it, know and understand its contents, and execute this stipulation of settlement freely and voluntarily. In executing this stipulation of settlement each party acknowledges that they have not relied

on, or made to the other party or anyone purporting to act on their behalf, any promise or representation that is not in this stipulation of settlement.

16. This Stipulation shall be construed under the laws of the State of New York, without regard to the conflicts of law principles thereof. In the event of any dispute, the parties agree to the exclusive jurisdiction and venue of the Supreme Court of the State of New York, County of Orange.

17. This stipulation of settlement constitutes the entire agreement between the parties pertaining to the subject matter thereof and shall supersede the terms and conditions of any and all prior discussions, understandings, agreements, promises, representations and the like, all of which are deemed merged into this stipulation of settlement.

VILLAGE OF TUXEDO PARK


CINDY L. BOOTH

By: 
HON. LIANE NEUHAUSER, Mayor

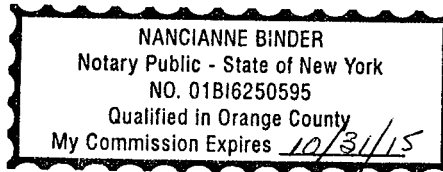
STATE OF NEW YORK)

ss.:

COUNTY OF ORANGE)

On the 9th day of April in the year 2015 before me, the undersigned, personally appeared Cindy L. Booth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she signed the same in her personal capacity, and that by her signature on the instrument she duly executed the instrument.

Nancianne Binder
NOTARY PUBLIC



STATE OF NEW YORK)

ss.:

COUNTY OF ORANGE)

On the 9th day of April in the year 2015 before me, the undersigned, personally appeared Hon. Liane Neuhauser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she signed the same in her official capacity as the duly elected Mayor of the Village of Tuxedo Park, New York (hereinafter the "Village"), being duly authorized to do so by the Board of Trustees of the Village, and that by her signature on the instrument she duly executed the instrument on behalf of the Village.

Deborah A. Matthews
NOTARY PUBLIC

DEBORAH A. MATTHEWS
Notary Public, State of New York
No. 01MA5053250
Qualified in Orange County
Commission Expires December 11, 2017